

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA) NO. 4:17-CR-116-3
)
)
 VS.) Houston, Texas
) 3:08 p.m.
)
 JASON T. POSEY) October 11, 2017

RE-ARRAIGNMENT

BEFORE THE HONORABLE CHIEF JUDGE LEE H. ROSENTHAL

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

Mr. Ryan Ellersick
Mr. Robert Heberle
Mr. Charles Escher
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FOR THE DEFENDANT:

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1 COURT REPORTER:

2 Ms. Kathleen K. Miller, CSR, RMR, CRR
3 515 Rusk, Room 8004
4 Houston, Texas 77002
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5 Proceedings recorded by mechanical stenography.
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P R O C E E D I N G S

(Defendant present.)

THE COURT: Are we ready to proceed in the Posey plea?

MR. ELLERSICK: Yes, Your Honor.

THE COURT: Is your client here, Mr. Hilder?

MR. HILDER: Yes, Your Honor. Philip Hilder for the defense, and Mr. Posey is in the courtroom.

MR. ELLERSICK: Good afternoon, Your Honor.

Ryan Ellersick for the United States. Robert Heberle and Charles Escher also here for the United States.

THE COURT: Very good. Thank you.

MR. ELLERSICK: Your Honor, if we could just bring up one logistical matter.

THE COURT: Sure.

MR. ELLERSICK: We caught a last minute typo in the plea agreement. It was just a misnumbering of paragraphs, so we have now a corrected version that we can execute, but we just want to let the Court know about that.

It is nothing substantive. It was just a misnumbering.

THE COURT: That is fine. I am glad I am not the only one who makes those kinds of errors.

All right. Mr. Posey, I understand that you have conferred in depth and in detail with your lawyer, and that based on those discussions and your own

1 consideration, it is your decision to plead guilty; is that
2 correct?

3 THE DEFENDANT: Yes, ma'am.

03:09:31

4 THE COURT: All right. The purpose of this
5 hearing is to let me be sure, before I can accept your
6 plea, that, first of all, you know what you're doing.

7 THE DEFENDANT: Okay.

03:09:46

8 THE COURT: Secondly, I need to be sure that
9 you understand the rights that you are giving up by
10 pleading guilty.

11 THE DEFENDANT: Yes, ma'am.

03:10:01

12 THE COURT: And, finally, I need to be sure
13 that you did what you're pleading guilty for having done.
14 And for all of these areas I need to be sure that you are
15 doing this voluntarily of your own free will.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that I am going
18 to ask you questions about each of those areas?

19 THE DEFENDANT: Yes, ma'am.

03:10:10

20 THE COURT: If you answer any of the questions
21 falsely, you can be prosecuted separately for perjury
22 because you will be sworn to tell the truth before we
23 begin. Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

03:10:22

25 THE COURT: Would you please swear the witness?

1 CASE MANAGER: Raise your right hand, please.
2 (Defendant sworn.)

3 THE DEFENDANT: Yes, ma'am.

4 CASE MANAGER: Thank you.

03:10:34

5 THE COURT: All right. Mr. Posey, you're now
6 under oath. Your answers may later be used against you in
7 a separate prosecution for perjury if they are false. Do
8 you understand that?

9 THE DEFENDANT: Yes, ma'am.

03:10:46

10 THE COURT: All right. If you don't understand
11 any question that I ask you, will you ask me to repeat it
12 or rephrase it before you answer it?

13 THE DEFENDANT: Yes, ma'am.

03:10:56

14 THE COURT: If at any time you want to ask your
15 lawyer a question, you may. You don't have to answer my
16 question first or ask my permission. Do you understand
17 that?

18 THE DEFENDANT: Yes, ma'am.

03:11:08

19 THE COURT: Would you please tell me your full
20 name, how old you are, and the highest level of education
21 you have?

22 THE DEFENDANT: Jason Tyler Posey, age 46, and
23 I am one semester short of my degree from the University of
24 Mississippi.

03:11:22

25 THE COURT: This question will sound silly in

1 light of your answer, but I have to ask it. Can you read
2 and write English easily?

3 THE DEFENDANT: Yes, ma'am.

03:11:32

4 THE COURT: Have you ever been treated for any
5 kind of mental illness or any psychiatric or psychological
6 problem?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Are you taking -- are you addicted
9 to any drug?

03:11:40

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Are you addicted to alcohol?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Are you taking any medication?

14 THE DEFENDANT: Blood pressure medication.

03:11:46

15 THE COURT: All right. Does it have any side
16 effects that impact your ability to understand what is
17 going on around you or to think clearly?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Are you sick in any way today that
20 would keep you from understanding what's going on here?

03:11:55

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Do you feel well?

23 THE DEFENDANT: I'm sorry?

24 THE COURT: Do you feel well?

03:12:03

25 THE DEFENDANT: Yes. Yes, ma'am.

1 THE COURT: Good. And are you presently under
2 the influence of any drug or any alcoholic beverage?

3 THE DEFENDANT: No, ma'am.

03:12:11

4 THE COURT: Have you had enough time to talk
5 with your lawyer?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Are you satisfied with the advice
8 and the help that your lawyer has given you?

9 THE DEFENDANT: Yes, ma'am.

03:12:18

10 THE COURT: Do you want to ask him anymore
11 questions or get anymore advice before we go on?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Mr. Hilder, have you had enough
14 time to investigate this case?

03:12:26

15 MR. HILDER: Yes, Judge.

16 THE COURT: Are you satisfied that Mr. Posey
17 fully understands the charges he faces and the punishment
18 that he may face?

19 MR. HILDER: I do.

03:12:35

20 THE COURT: Has he been able to cooperate with
21 you and has he cooperated with you fully?

22 MR. HILDER: Yes, he has.

23 THE COURT: Do you have any questions as to
24 Mr. Posey's competence to plead guilty?

03:12:46

25 MR. HILDER: I do not.

1 THE COURT: Does the government?

2 MR. ELLERSICK: No, Your Honor.

3 THE COURT: Nor does the Court. Court finds,
4 based on all of the filings, prior proceedings, and the
03:12:56 5 proceeding here today that Mr. Posey is competent to
6 knowingly, voluntarily, and intelligently plead guilty.

7 Mr. Posey, one of the things I told you I
8 had to be sure about is that you understand the rights that
9 you're giving up when you plead guilty. I am going to go
03:13:13 10 over with you the rights that you would have if you
11 continued to plead not guilty because that's what you're
12 giving up. Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. Do you understand,
03:13:22 15 first of all, that you do have the right to continue to
16 plead not guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you were to do so, you would
19 have the right to have the charges against you tried before
03:13:33 20 a jury made up of 12 citizens of this district, or if
21 everybody agreed, before the Judge. Do you understand that
22 right?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: At this trial, you would have the
03:13:44 25 right to be represented by a lawyer throughout. If you

1 could not afford one, one would be appointed for you. Do
2 you understand that right?

3 THE DEFENDANT: Yes, ma'am.

03:13:58

4 THE COURT: At this trial that you would have
5 if you continued to plead not guilty, the burden would be
6 on the government to prove your guilt beyond a reasonable
7 doubt. You would have no burden to prove your own
8 innocence or to present any evidence at all. Do you
9 understand that?

03:14:12

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: To prove your guilt beyond a
12 reasonable doubt, which is the government's burden, it
13 would call witnesses who would come to court and testify.
14 You understand that you would have the right to see and
15 hear each of these witnesses, and to have your lawyer
16 cross-examine them on your behalf?

03:14:22

17 THE DEFENDANT: Yes, ma'am.

03:14:33

18 THE COURT: You would have no obligation to
19 present any witnesses or evidence yourself, but you would
20 have the right to do so. That would include the right to
21 subpoena witnesses to require them to come to court to
22 testify. Do you understand that right?

23 THE DEFENDANT: Yes, ma'am.

03:14:44

24 THE COURT: You would also have the right to
25 decide whether you wanted to testify or not. Because you

1 cannot be compelled to testify against yourself, if you
2 decided to remain silent, you would be entitled to have the
3 jury instructed that they could not use your silence as
4 evidence of guilt. Do you understand that?

03:15:04

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And at this trial you could not be
7 convicted unless every member of the jury found that you
8 were guilty beyond a reasonable doubt. Do you understand
9 that the verdict would have to be unanimous before you
10 could be convicted?

03:15:17

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: By entering a guilty plea, if I
13 accept your plea, you will be convicted with no trial at
14 all. Do you understand that?

03:15:28

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You are giving up the right to a
17 trial and all the rights that go along with having a trial.
18 Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

03:15:35

20 THE COURT: You're also giving up the right in
21 your plea agreement to file an appeal or a later challenge,
22 and I am going to go over that in more detail. But you
23 also need to understand that even apart from your plea
24 agreement, just by pleading guilty, you're giving up the
25 right to make a number of arguments later on to try to get

03:15:53

1 your conviction set aside, or your sentence set aside or
2 reduced, that you might have been able to make if you had
3 gone to trial and been convicted. Do you understand that
4 that's another consequence of your guilty plea?

03:16:08

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Mr. Posey, I don't know if you have
7 any licenses, professional licenses, or anything like that,
8 but a conviction for the kind of offenses that you are
9 pleading guilty to can lead to the inability to qualify

03:16:34

10 ever for professional licenses in a number of fields,
11 including the practice of law. Do you understand that
12 that's another potential consequence of a guilty plea?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Did you and your lawyer carefully,
15 line by line, go over together the written charges against
16 you in the indictment, particularly Counts 4, 8 and 22 of
17 the first superseding indictment?

03:16:56

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Did you go over the whole
20 indictment carefully?

03:17:13

21 THE DEFENDANT: Carefully, yes, ma'am.

22 THE COURT: And did you have a chance to ask
23 Mr. Hilder all the questions you wanted to about the
24 indictment?

03:17:22

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Did he explain it to you to your
2 satisfaction?

3 THE DEFENDANT: Yes, ma'am, he did.

4 THE COURT: I want to go over with you the
03:17:35 5 elements of the claims that the government presents in
6 Count 4, which is wire fraud -- mail fraud; Count 8, which
7 is wire fraud; and Count 22, which is money laundering,
8 because those are the counts you're pleading guilty to.

9 Do you understand that?

03:17:46 10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: The government claims and at trial
12 would have to prove with respect to Count 4 first that you
13 knowingly devised or intended to devise a scheme to
14 defraud, and you don't have to be the one who came up with
03:18:03 15 it in the first instance; second, that the scheme to
16 defraud employed false material representations; third,
17 that you mailed something or caused something to be sent
18 through United States Postal Service, or a private or
19 commercial interstate carrier for the purpose of executing
03:18:25 20 the scheme or attempting to do so; and finally, that you
21 acted with the specific intent to defraud.

22 Do you understand what the government
23 claims you did in Count 4?

24 THE DEFENDANT: Yes, ma'am.

03:18:38 25 THE COURT: Count 8 is similar. The difference

1 is that in the third element, instead of sending something
2 through the mail or through a carrier, the allegation is
3 that you transmitted or caused to be transmitted by way of
4 wire communications in interstate commerce any writing,
03:19:01 5 sign, signal, picture or sound for the purpose of executing
6 the scheme. And, again, that you acted with the specific
7 intent to defraud.

8 Do you understand what the government
9 claims you did in Count 8 on wire fraud?

03:19:14 10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Count 22 is, of course, different.
12 It is money laundering. The government would have to
13 prove at trial, first, that you knowingly engaged or
14 attempted to engage in a monetary transaction; second, that
03:19:33 15 it was for a value or of a value greater than \$10,000;
16 third, that it involved criminally derived property;
17 fourth, that the criminally derived property was derived
18 from a specified unlawful activity; fifth, that you knew
19 that the monetary transaction involved criminally derived
03:19:57 20 property; and finally, that it took place, the transaction
21 took place, within the United States.

22 You understand what the government claims
23 you did that violated Count 22, money laundering?

24 THE DEFENDANT: Yes, ma'am.

03:20:14 25 THE COURT: Under the statute, Mr. Posey, the

1 maximum for the two fraud violations are 20 years each, and
2 a fine that can go as high as \$250,000, or the greater of
3 twice the gross gain or the gross loss resulting from the
4 offense.

03:20:41

5 And here it would be the twice the gross
6 gain, correct?

7 MR. ELLERSICK: I think that might be right,
8 Your Honor. Yes.

03:20:51

9 THE COURT: I mean, that would be the higher
10 amount?

11 MR. ELLERSICK: Yes.

12 THE COURT: What do you estimate the fraud loss
13 to be here?

03:20:58

14 MR. ELLERSICK: It's -- we estimate it's the
15 combination of the \$350,000 and then the 457,000 and
16 change, but that's a matter that the parties are free to
17 argue at sentencing under this agreement.

18 THE COURT: I understand that but I'm trying to
19 convey the worst possible set of consequences.

03:21:13

20 MR. ELLERSICK: Yes.

21 THE COURT: So the maximum fine would be
22 twice 350,000 plus what?

23 MR. ELLERSICK: \$450,571.65.

03:21:32

24 THE COURT: Okay. Mental arithmetic was never
25 my strong suit. Do it for me.

1 So, yeah, take out your cell phone, in
2 other words.

3 MR. ELLERSICK: So the combination of those
4 two --

03:22:07 5 THE COURT: -- sources of money.

6 MR. ELLERSICK: Yes. Times two would be
7 \$1,601,143.03.

8 THE COURT: All right. And would that apply
9 separately potentially for each count? Stacking?

03:22:25 10 MR. ELLERSICK: One moment, Your Honor.

11 THE COURT: It's a fine. It's not restitution.

12 MR. ELLERSICK: We think that it would, Your
13 Honor.

14 THE COURT: I think so, too. So, again, one
03:22:46 15 million --

16 MR. ELLERSICK: -- 601,143.03.

17 THE COURT: Now multiply that by 3. The
18 potential stacking effect for each of the three counts.

19 Assuming that it would be the same for money laundering,
03:23:07 20 which is, again, the greater of twice the gross gain
21 resulting from the offense, and we obviously have to argue
22 about what that means with money laundering.

23 MR. ELLERSICK: And the total multiplied by
24 three, Your Honor, is \$4,803,429.09.

03:23:25 25 THE COURT: All right. So, Mr. Posey, you're

1 looking at a maximum prison sentence of up to 20 years each
2 on the two fraud counts, and up to five years on the money
3 laundering count. That is a total maximum imprisonment
4 that you face of 45 years. Do you understand that?

03:23:48

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: On top of that, you would face
7 liability for a potential fine of over 4 million dollars.
8 Do you understand that?

9 THE DEFENDANT: Yes, ma'am.

03:23:56

10 THE COURT: On top of that, you would owe the
11 government \$300 as a mandatory assessment. Do you
12 understand that?

13 THE DEFENDANT: Yes, ma'am.

03:24:09

14 THE COURT: You would be subject to supervised
15 release following your release from prison. That would be
16 for up to three years. If during supervised release, you
17 violated any of the conditions of supervised release, you
18 would be sent back to prison for up to two years regardless
19 of any time you might have spent on supervised release
20 before you committed the violation. Do you understand
21 that?

03:24:31

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And you understand, Mr. Posey, that
24 there is no parole in the federal prison system?

03:24:40

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Any sentence that you get is not
2 going to be shortened by parole.

3 THE DEFENDANT: Yes, ma'am.

03:24:51

4 THE COURT: And this defendant faces no
5 restitution obligation, correct, or does he?

6 MR. ELLERSICK: Under the plea agreement, Your
7 Honor, he does, potentially.

8 THE COURT: All right. And that would be up to
9 \$350,000, or the larger amount?

03:25:06

10 MR. ELLERSICK: It would be for both. It's
11 the -- the fraud counts he's pleading guilty to would
12 encompass both.

13 THE COURT: So the total for that would be
14 \$350,000 plus the --

03:25:18

15 MR. ELLERSICK: The 457,000.

16 THE COURT: All right. You understand that on
17 top of this 4-million-dollar fine that you could face
18 having to pay, you would also be subject to a restitution
19 obligation in the amount the government just stated?

03:25:34

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And you could be required to pay
22 both. Do you understand that, sir?

23 THE DEFENDANT: Yes, ma'am.

03:25:50

24 THE COURT: All right. Did you and your lawyer
25 read the plea agreement line by line, word by word?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Same question I asked you a minute
3 ago. Did you have an opportunity to review it and ask your
4 lawyer all the questions you had about it?

03:26:05 5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you have any other questions you
7 want to ask?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: All right. I want to go over a few
03:26:14 10 of the provisions in the plea agreement with you.

11 First, you understand, sir, that your case
12 is subject to the sentencing guidelines?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Those guidelines are advisory only,
03:26:34 15 but they are a starting point for where the Court has to
16 look, that the Court has to determine in figuring out the
17 sentence that you ought to get.

18 I told you the maximum, but that may or
19 may not be what sentence I actually impose. You understand
03:26:56 20 that it could be different?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you understand that the -- even
23 starting with the guideline sentence, the Court would have
24 to first, before it could even make that calculation, first
03:27:10 25 go through the work of figuring out the guideline that

1 applies to you, and what the sentencing range is. Do you
2 understand that?

3 THE DEFENDANT: Yes, ma'am.

03:27:22

4 THE COURT: There is no set agreement here on
5 the sentence that the defendant will actually receive, is
6 there?

7 MR. ELLERSICK: That is correct, Your Honor.

8 THE COURT: And the government has not agreed
9 to a specific sentence, correct?

03:27:33

10 MR. ELLERSICK: That's correct.

11 THE COURT: And it has not agreed that it would
12 seek the lowest end of any sentence, or a particular
13 downward departure?

14 MR. ELLERSICK: That is correct.

03:27:43

15 THE COURT: All right. In fact, the government
16 has the ability under this plea agreement to ask the Court
17 for the highest possible sentence available under the
18 guidelines, or even under the statute, correct?

19 MR. ELLERSICK: Yes.

03:27:59

20 THE COURT: Other than asking for the
21 adjustment for acceptance --

22 MR. ELLERSICK: Yes.

23 THE COURT: -- which you have agreed to do?

03:28:05

24 MR. ELLERSICK: We have agreed what provision
25 of the guidelines will apply.

1 THE COURT: Right. And the Court could reject
2 that.

3 MR. ELLERSICK: Yes.

4 THE COURT: Bottom line, Mr. Posey, is that all
03:28:16 5 of the work necessary to figure out if the government is
6 right about the guideline provision that applies, and the
7 range that would then follow, and even knowing that, what
8 guidelines -- what sentence ought to apply considering but
9 not limited to the guidelines, before I can even start that
03:28:39 10 work, there has to be a presentence investigation. You
11 will be interviewed as part of it. There will be a
12 detailed report. You will get a copy through Mr. Hilder.
13 The government will get a copy. You will have a chance to
14 make objections. There has to be a hearing then at which I
03:28:56 15 listen carefully to what you want to say and what
16 Mr. Hilder says. I resolve the objections. I figure out
17 what the guideline range is, and then I figure out the
18 appropriate sentence. None of that work has yet been done.
19 Do you understand?

03:29:08 20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Standing here today, deciding
22 whether or not to plead guilty and sign this plea
23 agreement, you have got no assurance as to the sentence you
24 are going to get. All you know for sure is the maximum
03:29:23 25 under the statute. Do you understand that uncertainty?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: If it turns out after we do all
3 this work that the sentence you get is higher than you
4 expect, you are stuck. You cannot get out of your plea, to
5 start. Do you understand that?

03:29:42

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You can't change your mind.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And under this agreement, you
10 cannot file an appeal. You cannot file a later challenge.
11 You are simply stuck. The only exception would be if I
12 went higher than the statute permits. Do you understand
13 that?

03:29:48

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: As long as I stay within the
16 statute, there is nothing you can do. Even if I sentence
17 you more harshly than you expect, or even more harshly than
18 the government wants me to. Do you understand that?

03:30:04

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: The government has said that it
21 agrees what guideline applies, therefore what range
22 applies; but again, I am not bound by the government's
23 agreement. If I decide they're wrong on the law or wrong
24 on the facts and I impose or use a different guideline
25 range, and your sentence is higher as a result, there would

03:30:21

03:30:55

1 be nothing you could do about it, again, as long as I did
2 not go above the maximum. Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

03:31:15

4 THE COURT: And I'm just checking the agreement
5 on the waiver provision. The government has agreed that it
6 would ask me for an adjustment to the guideline range to
7 make it lower to reflect that you have pleaded guilty and
8 accepted responsibility and saved the government the time
9 and trouble of trying you. You understand that?

03:31:50

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Again, if for some reason I find
12 that it is inappropriate to make the adjustment for
13 acceptance of responsibility, and I don't do it, and your
14 sentence is harsher as a result, there would be nothing you
15 could do about it. Do you understand that?

03:32:08

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: The parties have agreed to the
18 money judgment that ought to be imposed, and we went
19 through some work to figure out what the maximum financial
20 exposure under the statute to you could be. The fact that
21 there has been an agreement as to the money judgment
22 doesn't say anything about the amount of that judgment. It
23 is merely an agreement that a money judgment can be
24 imposed. So you do remain exposed --

03:32:42

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: -- to the full range of financial
2 penalties that I described. You understand that?

3 THE DEFENDANT: Yes, ma'am.

03:32:50

4 THE COURT: And you understand that when it
5 comes to deciding the sentence that ought to be imposed, I
6 am not limited to the allegations in the superseding
7 indictment; I am not limited to what the government knows
8 about you today; I am not limited to what is proven in
9 court beyond a reasonable doubt. I can rely, in

03:33:09

10 appropriate circumstances, on sufficiently reliable
11 information that's outside those categories in deciding
12 what sentence is appropriate. And if that occurs, again,
13 and if it makes your sentence higher, there would be
14 nothing you could do about it. Do you understand that?

03:33:27

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: There is also a forfeiture amount.
17 Does that cover any dollars that we haven't talked about?

18 MR. ELLERSICK: No, Your Honor.

19 THE COURT: All right.

03:34:04

20 MR. ELLERSICK: Your Honor --

21 THE COURT: Which accounts -- I'm sorry. Go
22 ahead.

23 MR. ELLERSICK: I'm sorry to interrupt, Your
24 Honor. I was just going to make one correction and this is
25 because there is an inconsistency between the plea

03:34:10

1 agreement and the sentence data sheet that we just noticed.
2 The money laundering count has a maximum penalty of ten
3 years --

4 THE COURT: Okay.

03:34:20

5 MR. ELLERSICK: -- imprisonment and that's what
6 the plea agreement says. The sentence data sheet
7 incorrectly says five years.

8 THE COURT: So you are looking at 50 years max,
9 not 45. You understand that?

03:34:29

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. Thank you for
12 clarifying.

13 MR. ELLERSICK: Thank you, Your Honor.

03:34:38

14 THE COURT: What I was going to say is that you
15 have also agreed that you will not challenge the fine in
16 any way, you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Either direct appeal or later?

19 THE DEFENDANT: Yes, ma'am.

03:34:47

20 THE COURT: Is there an agreement to dismiss
21 counts?

22 MR. ELLERSICK: It is not explicitly set forth,
23 Your Honor, but it is certainly implied, and we make that
24 agreement here today.

03:35:02

25 THE COURT: All right.

1 MR. ELLERSICK: So we intend to dismiss the
2 remaining counts of the superseding indictment at the time
3 of sentencing.

4 THE COURT: All right. Mr. Posey, what you
03:35:09 5 need to understand about that, is that even though the
6 government has agreed to dismiss other counts that name you
7 besides 4, 8 and 22, under some circumstances I can take
8 into account the facts that are alleged in those counts in
9 determining your sentence. And if that makes your sentence
03:35:27 10 heavier, again, as long as it is within the statutory
11 maximum, there would be nothing you could do about it. Do
12 you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. The only thing you
03:35:37 15 could do about it -- take it back -- would be to
16 potentially allege ineffective assistance of trial counsel.
17 But Mr. Hilder is a very effective lawyer, and you have
18 already told me how helpful he has been to you in this
19 case. So, in effect, there would be nothing you could do
03:36:01 20 about it. You understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. I want you to turn in
23 particular to the part of the plea agreement that starts on
24 the bottom of page 10. It's under paragraph numbered 14,
03:36:30 25 but, in fact, it covers a number of paragraphs under the

1 heading "Factual Basis for Guilty Plea," and it goes all
2 the way over to the middle of page 17. See where I am
3 looking?

4 THE DEFENDANT: Yes, ma'am.

03:36:43

5 THE COURT: Did you and Mr. Hilder read these
6 sections with even greater care than you read the
7 indictment and the rest of the plea agreement?

8 THE DEFENDANT: Yes, ma'am.

03:36:54

9 THE COURT: All right. Is everything that is
10 said about you in these seven pages under the heading
11 "Factual Basis" true and correct?

12 THE DEFENDANT: Yes, ma'am.

03:37:09

13 THE COURT: Is there anything about any
14 statement made in this section of your plea agreement that
15 you want to change, correct or modify in any way?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: How do you plead, sir, to Counts 4,
18 8 and 22 of the superseding indictment?

19 THE DEFENDANT: Guilty, ma'am.

03:37:26

20 THE COURT: Is it your statement here in court
21 and under oath that every allegation against you in these
22 counts of the superseding indictment and every statement
23 about you in the factual basis for the guilty plea included
24 in the plea agreement are true and correct?

03:37:43

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Are you making this guilty plea to
2 each of the three counts freely and voluntarily?

3 THE DEFENDANT: Yes, ma'am.

03:37:50

4 THE COURT: Has anybody forced you, or
5 threatened you, or coerced you, or done any harm to you or
6 anybody else to get you to plead guilty?

7 THE DEFENDANT: No, ma'am.

03:38:02

8 THE COURT: Are you pleading guilty because of
9 any promise made to you other than what's in writing in the
10 plea agreement and what's been stated here in open court
11 today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Are you pleading guilty to protect
14 anyone else from prosecution?

03:38:09

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Are you pleading guilty, Mr. Posey,
17 because you are guilty, and for no other reason?

18 THE DEFENDANT: Yes, ma'am.

03:38:18

19 THE COURT: You told me you read and understood
20 the plea agreement. Are you ready to sign it under oath at
21 this time, if you have not already done so?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you have it there for him?

24 MR. HILDER: Yes, Judge, we have it right here.

03:38:30

25 THE COURT: Thank you.

1 While Mr. Posey is doing that, Mr. Hilder,
2 let me ask you if you know of any reason why Mr. Posey
3 should not plead guilty.

4 MR. HILDER: No, Judge, I do not.

03:38:46

5 THE COURT: Do you know of any meritorious
6 defense he would have?

7 MR. HILDER: No, Judge, I do not.

8 THE COURT: Do you know of any additional
9 admonishments he should receive that have not been given?

03:38:56

10 MR. HILDER: No, Judge, I do not.

11 THE COURT: Is the government aware of any?

12 MR. ELLERSICK: No, Your Honor.

13 THE COURT: Ms. Eddins. He has signed, I
14 believe.

03:39:07

15 CASE MANAGER: Has he signed?

16 MR. HILDER: Yes. We are just signing the
17 addendum right now.

18 THE COURT: All right. I would like Mr. Posey
19 to sign all the places he needs to sign.

03:39:33

20 Has the government signed as well?

21 (Document signed.)

22 CASE MANAGER: Mr. Posey, if you will raise
23 your right hand, please.

24 Have you read or had read to you the plea

03:39:54

25 agreement you have just signed?

1 THE DEFENDANT: Yes, ma'am.

2 CASE MANAGER: Are the matters contained in
3 this agreement true and correct to the best of your
4 knowledge?

03:40:01 5 THE DEFENDANT: Yes, ma'am.

6 CASE MANAGER: Have you signed of your own free
7 will?

8 THE DEFENDANT: Yes, ma'am.

9 CASE MANAGER: Thank you.

03:40:05 10 THE COURT: Thank you. Mr. Posey, these are
11 the Court's findings with respect to your plea.

12 As earlier stated, you are clearly
13 mentally competent and capable of entering a knowing,
14 voluntary and informed plea. I now find that the plea is
03:40:18 15 supported by independent facts that establish all the
16 elements of the offense and the three counts to which you
17 have pleaded guilty and that you intended to do the acts
18 alleged in those counts.

19 I find that your plea of guilty is
03:40:31 20 voluntarily, freely and knowingly made, that you understand
21 the nature of these proceedings and the consequences of
22 pleading guilty, and that you have made an informed plea.
23 I accept your guilty plea, Mr. Posey, and I find you guilty
24 as charged in Counts 4, 8 and 22 of the superseding
03:40:52 25 indictment.

1 There will now be the presentence
2 investigation that I described to you. As part of it you
3 will be interviewed. Mr. Hilder may be present in that
4 interview if you want him to be.

03:41:05

5 The report that will be provided and -- to
6 me, and to all counsel, will be provided in advance of a
7 deadline for you, through Mr. Hilder, to make any
8 objections that you think should be presented. And on
9 March 29, at 9:00 a.m., a hearing will be held for

03:41:24

10 sentencing, and at that hearing you will be able to make
11 any statement and Mr. Hilder will be able to make any
12 statement that you wish on your behalf. Do you understand?

13 THE DEFENDANT: Yes, ma'am.

03:41:36

14 THE COURT: Are the conditions of bond to
15 remain in place?

16 MR. ELLERSICK: Yes, Your Honor.

17 THE COURT: All right. So ordered. Anything
18 further for today?

19 MR. HILDER: No, Judge.

03:41:44

20 MR. ELLERSICK: No. Thank you.

21 THE DEFENDANT: Thank you.

22 MR. HILDER: May we be dismissed?

23 THE COURT: You may.

24 MR. HILDER: Thank you.

25 (Concluded at 3:41 p.m.)

1 COURT REPORTER'S CERTIFICATE

2
3 I, Kathleen K. Miller, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.

6
7 DATE: Dec. 20, 2017 /s/
8 Kathleen K. Miller, RPR, RMR, CRR
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